United Malacca Rubber Estates Bhd v Pentadbir Tanah Daerah Johor Bahru & Anor

HIGH COURT (JOHOR BAHRU) — ORIGINATING SUMMONS NO 24–469–95
MOHD GHAZALI J
27 MARCH 1996

Land Law *— Acquisition of land — Purpose for which land needed — Construction of causeway and development of township — Whether land acquired for public utility — Whether court can question the opinion of the state authority — Land Acquisition Act 1960 ss 3 & 37(3)*

Land Law *— Acquisition of land — Objection against amount of compensation awarded — Whether person objecting was a person interested in the land and thereby may make objection — Land Acquisition Act 1960 s 37(1) & (3)*

Words and Phrases *— 'Any government or any person or corporation' — Land Acquisition Act 1960 s 37(3)*

The plaintiff, a company, was the owner of several pieces of land situated in the district of Johor Bahru ('the plaintiff's land'). On 27 December 1992, a notice in Form A pursuant to s 4 of the Land Acquisition Act 1960 ('the Act') was published in the *Gazette* notifying that several pieces of land ('the scheduled lands'), which included the plaintiff's land, were likely to be acquired for the purpose of the second Malaysia-Singapore causeway project. On 7 April 1993 the State Government of Johor and a public limited company, United Engineers (M) Bhd ('UEM'), ie the second defendant, entered into an agreement entitled 'Development Agreement' ('the development agreement') wherein the state government acknowledged that the scheduled lands were needed by UEM for the purposes of the development of a second causeway between Malaysia and Singapore and ensured that the state authority shall acquire the scheduled lands. In the same agreement, the state government also ensured that the state authority shall notify UEM of any award of an amount in excess of RM15,000 made by the land administrator in respect of the compulsory acquisition and shall promptly consult UEM on whether an objection to such an award should be made by the state authority or UEM. Consequently on 24 June 1993 a notification in Form D pursuant to s 8 of the Act was published in the *Gazette* declaring that the scheduled lands were needed for the said second causeway project and the development of the Gelang Patah area. Upon the conclusion of the enquiry held to assess the amount compensation payable, the land administrator made an award of RM123,688,000 for the plaintiff's land but subsequently made payment of only RM92,766,000 being 75% of the sum awarded as UEM had lodged its objections to the amount of compensation awarded pursuant to s 37(1) of the Act, on the basis that it was a 'person interested' pursuant to s 37(3) of the Act as the scheduled lands were acquired by the state authority on behalf of UEM. The objections lodged by UEM and made to the

land administrator had been referred to the court for its determination and was still pending at the date of the hearing of this action. On 26 June 1995 the plaintiff filed this action against the Land Administrator for the District of Johor Bahru ('the first defendant') and UEM, and prayed for declarations, inter alia (i) that UEM had no standing and was not entitled to lodge an objection against the award of compensation made by the first defendant in respect of the compulsory acquisition of the plaintiff's land; and (ii) that the objections lodged by UEM to the High Court made pursuant to s 38(5) of the Act be struck out. At the hearing, counsel for the plaintiff contended that UEM did not constitute a 'person interested' on the following grounds, namely (i) that the plaintiff did not believe that its land was acquired on behalf of UEM; (ii) that the plaintiff's land was not acquired for an undertaking of work which is of public utility; and (iii) that UEM, a public listed company, was not a corporation undertaking a work which is of public utility.

Held, dismissing the action:

(1) In the development agreement UEM had agreed to pay the state government an amount equal to the acquisition costs which was provided for in cl 8 of the development agreement. It therefore could not be disputed that the scheduled land was acquired by the state authority on behalf of UEM (see p 10A–C).

(2) The words appearing in s 37(3) of the Act which referred to 'any government or any person or corporation undertaking a work which in the opinion of the state authority is of public utility' would encompass any entity that undertook a work of public utility. These words were not restricted to refer only to state governments or persons or corporations, including statutory bodies performing some public service, eg a gas corporation or a water board, but would also include companies incorporated under the Companies Act 1965 which were empowered by its memorandum and articles of association and appointed by any government or public authority to perform an undertaking for the general utility of the public (see p 10E–F).

(3) Under s 37(3) of the Act the state authority was the sole authority to decide what amounted to an undertaking of public utility and there was no provision in the Act which said that it must specifically state its opinion in the declaration. There was also no provision which said that it must name the person on whose behalf the scheduled land was being acquired. The opinion of the state authority therefore could not be questioned by a civil court (see p 15A–C); *Yew Lean Finance Development (M) Sdn Bhd v Director of Lands & Mines, Penang* [1977] 2 MLJ 45 followed.

(4) The undertaking of the second causeway project could fall under either s 3(a) or (b) of the Act, ie a public purpose or a purpose which is beneficial to the economic development of Malaysia and the development of the Gelang Patah area as a township could

fall under either s 3(a), (b) or even (c). The undertaking therefore was an undertaking of public utility (see p 16G–I).

(5) It was the state authority who was the sole authority to decide whether any government or any person or corporation, on whose behalf a scheduled land was acquired, would be undertaking a work of public utility and the decision by the state authority in this respect could not be questioned. As long as the state authority was of the view that that person on whose behalf a scheduled land was acquired would be undertaking a work of public utility, that would be sufficient for that person to be deemed a person interested in the land and consequently he would have the standing to make objection as to the amount of compensation awarded (see p 16I–17A).

[**Bahasa Malaysia summary**

Plaintif, sebuah syarikat, adalah tuan punya beberapa bidang tanah di daerah Johor Bahru ('tanah plaintif'). Pada 27 Disember 1992, satu notis dalam Borang A menurut s 4 Akta Pengambilan Tanah 1960 ('Akta tersebut') telah disiarkan di dalam warta yang memaklumkan bahawa beberapa bidang tanah ('tanah yang dijadualkan'), termasuk tanah plaintif, mungkin akan diambil untuk tujuan projek tambak kedua Malaysia-Singapura. Pada 7 April 1993, Kerajaan Negeri Johor dan sebuah syarikat awam berhad, United Engineers (M) Bhd ('UEM'), iaitu defendan kedua, telah memasuki satu 'Perjanjian Pembangunan' ('perjanjian pembangunan tersebut') di mana kerajaan negeri telah mengesahkan bahawa tanah yang dijadualkan dikehendaki oleh UEM untuk tujuan pembinaan tambak kedua di antara Malaysia dan Singapura dan telah memastikan bahawa pihak berkuasa negeri akan mengambil tanah yang dijadualkan. Didalam perjanjian yang sama, kerajaan negeri juga memastikan bahawa pihak berkuasa negeri akan memaklumkan UEM tentang sebarang award yang melebihi RM15,000 yang dibuat oleh pentadbir tanah berhubugan dengan pengambilan wajib itu dan akan dengan secepatnya berunding dengan UEM mengenai sama ada bantahan terhadap award itu harus dibuat oleh pihak berkuasa negeri atau UEM. Selepas itu pada 24 Jun 1993, satu pemberitahuan dalam Borang D mengikut s 8 Akta tersebut telah disiarkan di dalam warta yang mengisytiharkan bahawa tanah yang dijadualkan itu dikehendaki untuk projek tambak kedua tersebut dan untuk pembangunan kawasan Gelang Patah. Setelah selesainya siasatan yang diadakan untuk mentaksirkan jumlah pampasan yang kena dibayar, pentadbir tanah telah membuat award sejumlah RM123,688,000 untuk tanah plaintif, akan tetapi telah membayar hanya RM92,766,000 iaitu 75% daripada jumlah yang dibuat, kerana UEM telah membuat bantahan mengikut s 37(1) Akta tersebut terhadap jumlah pampasan yang diawardkan pada dasar bahawa ia adalah 'pihak berkepentingan' mengikut s 37(3) Akta tersebut oleh kerana tanah yang dijadualkan yang diambil oleh pihak berkuasa negeri adalah bagi pihak UEM. Bantahan yang dibuat oleh UEM kepada pentadbir tanah telah dirujuk kepada mahkamah

untuk diputuskan dan ianya masih menunggu keputusannya semasa perbicaraan tindakan ini. Pada 26 Jun 1995, plaintif telah memfailkan tindakan ini terhadap Pentadbir Tanah Daerah Johor Bahru ('defendan pertama') dan UEM, dan telah memohon untuk deklarasi, antara lainnya (i) bahawa defendan kedua tidak mempunyai kedudukan dan tidak berhak membuat bantahan terhadap award pampasan yang diberi oleh defendan pertama berkenaan dengan pengambilan tanah plaintif; dan (ii) bahawa bantahan yang dibuat oleh UEM kepada Mahkamah Tinggi menurut s 38(5) Akta itu dibatalkan. Semasa perbicaraan, peguam bagi pihak plaintif telah berhujah bahawa UEM bukannya seseorang 'yang berkepentingan' berdasarkan alasan-alasan berikut, iaitu (i) bahawa plaintif tidak mempercayai bahawa tanah tersebut telah diambil bagi pihak UEM; (ii) bahawa tanah plaintif tidak diambil untuk menjalankan kerja-kerja yang melibatkan kegunaan awam; dan (iii) bahawa UEM, sebuah syarikat awam berhad, bukannya suatu perbadanan yang menjalankan kerja untuk kegunaan awam.

Diputuskan, menolak tindakan tersebut:

(1) Dalam perjanjian pembangunan tersebut, UEM telah bersetuju membuat bayaran kepada kerajaan negeri suatu jumlah yang sama dengan kos pengambilan yang diperuntukkan dalam fasal 8 perjanjian pembangunan tersebut. Maka ianya tidak boleh dipertikaikan bahawa tanah yang dijadualkan itu telah diambil oleh pihak berkuasa negeri bagi pihak UEM (lihat ms 10A–C).

(2) Perkataan-perkataan yang kelihatan di dalam s 37(3) Akta itu iaitu 'sesebuah kerajaan atau seseorang atau sesuatu perbadanan yang menjalankan suatu kerja yang pada pendapat pihak berkuasa negeri adalah untuk kegunaan awam' akan meliputi sebarang entiti yang melakukan kerja tersebut untuk kegunaan awam. Perkataan-perkataan tersebut itu tidak terhad untuk merujuk hanya kepada kerajaan negeri atau orang atau perbadanan, termasuk badan berkanun yang menjalankan perkhidmatan awam, sebagai contohnya perbadanan gas atau lembaga air sahaja, tetapi ianya meliputi juga syarikat-syarikat yang diperbadankan di bawah Akta Syarikat 1965 di mana syarikat-syarikat itu diberikuasa oleh memorandum dan artikel persatuan dan dilantik oleh mana-mana kerajaan atau pihak berkuasa awam untuk menjalankan satu kerja untuk kegunaan awam (lihat ms 10E–F).

(3) Di bawah s 37(3) Akta tersebut, pihak berkuasa negeri adalah pihak berkuasa tunggal yang akan memutuskan sama ada kerja tersebut adalah suatu kerja untuk kegunaan awam dan tidak terdapat peruntukan di dalam Akta tersebut yang menyatakan bahawa pihak berkuasa harus memberi pendapat secara spesifik di dalam deklarasi itu. Juga tidak terdapat peruntukan yang menyatakan bahawa pihak berkuasa harus menamakan orang yang bagi pihaknya tanah yang dijadualkan itu diambil. Pendapat pihak berkuasa negeri tidak boleh dipersoalkan oleh sesebuah mahkamah sivil (lihat ms 15A–C); *Yew Lean Finance Development*

A *(M) Sdn Bhd v Director of Lands & Mines, Penang* [1977] 2 MLJ 45 diikut.

(4) Kerja membina tambak kedua itu boleh termasuk di bawah s 3(a) atau (b) Akta tersebut, iaitu satu tujuan awam atau satu tujuan di mana ianya adalah berfaedah kepada pembangunan ekonomi Malaysia dan pembangunan kawasan Gelang Patah sebagai satu perbandaran boleh terjatuh di bawah s 3(a), (b) ataupun (c). Maka projek tersebut adalah satu projek untuk kegunaan awam (lihat ms 16G–I).

(5) Pihak berkuasa negeri adalah pihak berkuasa yang tunggal yang memutuskan sama ada sesuatu kerajaan atau mana-mana orang atau perbadanan, yang bagi pihaknya tanah yang dijadualkan diambil, akan menjalankan kerja untuk kegunaan awam dan keputusan pihak berkuasa negeri tentang perkara ini tidak boleh dipersoalkan. Selagi pihak berkuasa negeri berpendapat bahawa orang, yang bagi pihaknya sesuatu tanah yang dijadualkan diambil, akan menjalankan kerja untuk kegunaan awam, itu adalah mencukupi untuk orang itu dianggap sebagai seorang yang berkepentingan di dalam tanah itu dan oleh itu ianya akan mempunyai kedudukan untuk membuat bantahan terhadap jumlah pampasan yang diawardkan (lihat ms 16I–17A).]

[*Editorial note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No J–01–144 of 1996.]

Notes

For cases on purposes for which land is acquired, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1296–1297.

Cases referred to

Federal Commissioner of Taxation v Top of the Cross Pty Ltd & Anor (1981) 57 FLR 294 (folld)

Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban & Anor [1995] 3 MLJ 710 (refd)

Seatainer Terminals Ltd v Commissioner of Taxation (1979) 47 FLR 108 (folld)

Top of the Cross Pty Ltd v Federal Commissioner of Taxation; Travel Holdings (Australia) Pty Ltd v Federal Commissioner of Taxation (1980) 80 ATC 4,617 (refd)

Yew Lean Finance Development (M) Sdn Bhd v Director of Lands & Mines, Penang [1977] 2 MLJ 45 (folld)

Legislation referred to

Companies Act 1965 s 19(1), Third Schedule para 6, 10
Income Tax Assessment Act 1936 [Australia] s 62A
Land Acquisition Act 1960 ss 2, 8, 3, 37

Robert Lazar (*Shearn Delamore & Co*) for the plaintif. A

Teo Say Eng (Senior Federal Counsel) (Johore State Legal Advisor's Office) for the first defendant.

Zaki bin Tun Azmi (*Rashid & Lee*) for the second defendant.

Mohd Ghazali J: The background to this action is as follows. B

The plaintiff, a company, was the owner of several pieces of land known as Lots 1135 and 1136 Hakmilik G19779 Mukim of Pulai and Lots 1550– 1555 Hakmilik G20914 Mukim of Tanjung Kupang, situated in the district of Johor Bahru, Johor ('the plaintiff's land'). On 27 December 1992, a notice in Form A pursuant to s 4 of the Land Acquisition Act 1960 C ('the Act') was published in the *Gazette* (notification No 1699B) notifying that several pieces of land, which included the plaintiff's land ('the scheduled land') were likely to be acquired for the purpose of the second Malaysia-Singapore causeway project and the development of the surrounding areas. The relevant part of the notification reads:

D

> Adalah dengan ini diberitahu bahawa tanah-tanah yang butir-butirnya tersebut dalam jadual di bawah ini, termasuk tanah-tanah, jika ada, yang ditentukan dengan nombor-nombor lot tanah yang berjiran dengannya mungkin dikehendaki bagi maksud yang berikut:
>
> 'Cadangan pengambilan balik tanah kerana laluan kedua Malaysia-Singapura dan pembangunan persekitarannya.' E

On 7 April 1993 the State Government of Johor and a public limited company, United Engineers (M) Bhd ('UEM'), ie the second defendant, entered into an agreement entitled 'Development Agreement' ('the development agreement') wherein the state government acknowledged that the scheduled land was needed by UEM for the purposes of the F development of a second causeway between Malaysia and Singapore, which basically are a bridge, expressways and a new township, and ensured that the state authority shall acquire the scheduled land. In the same agreement, the state government also ensured that the state authority shall notify UEM of any award of an amount in excess of RM15,000 made by the land administrator in respect of the compulsory acquisition and shall G promptly consult UEM whether an objection to such an award should be made by the state authority or UEM.

Consequently, on 24 June 1993 a notification in Form D pursuant to s 8 of the Act was published in the *Gazette* (notification No 858) declaring that the scheduled land was needed for the said second causeway project H and the development of the Gelang Patah area. The declaration reads:

> Adalah dengan in diisytiharkan bahawa tanah-tanah dan kawasan-kawasan yang tertentu yang dinyatakan dalam jadual adalah dikehendaki bagi maksud yang berikut:
>
> 'Projek laluan kedua Malaysia-Singapura dan pembangunan kawasan I Gelang Patah.'

A The land administrator then proceeded with the various steps provided for under the Act to acquire the scheduled land. Consequently upon the conclusion of the enquiry held by the land administrator under the provisions of the Act, he made an award of RM123,688,000 for the plaintiff's land but subsequently made payment of only RM92,766,000 being 75% of the sum awarded as UEM had lodged its objections pursuant to s 37(1) of the B Act to the amount of compensation awarded on the basis that it is a 'person interested' pursuant to s 37(3) of the Act as the scheduled land was acquired by the state authority on behalf of UEM. The objections lodged by UEM and made to the land administrator have been referred to the court for its determination and was still pending at the hearing of this C action.

On 26 June 1995 the plaintiff filed this action against the first defendant, ie the Land Administrator for the district of Johor Bahru and the second defendant, ie UEM and prayed for the following orders:

D (1) a declaration that the second defendant has no standing and is not entitled to lodge an objection against the award of compensation made by the first defendant on 25 August 1994 in respect of the compulsory acquisition of the plaintiff's land;

(2) that the objections lodged by the second defendant to the High Court made pursuant to s 38(5) of the Act be struck out;

E (3) that the first defendant be ordered to pay the plaintiff the full amount of the award together with interest on such sum that has been withheld; and

(4) that the first and second defendant do pay the costs of this application.

F In its affidavit, the plaintiff contended that UEM did not constitute a 'person interested' on the following grounds, namely:

(1) that the plaintiff did not believe that its land was acquired on behalf of UEM as the said notification and the said declaration in the *Gazette* (referred to earlier) did not say so;

G (2) that the plaintiff's land was not acquired for an undertaking of work which is of public utility; and

(3) that UEM, a public listed company, was not a corporation undertaking a work which was of public utility.

At the hearing, counsel for the plaintiff submitted that the ability of UEM H to make an objection to the said award would depend upon the construction of s 37 of the Act. Section 37 reads:

> (1) Any person interested in any scheduled land, who pursuant to any notice under ss 10 or 11, has made a claim to the land administrator in due time and who has not accepted the land administrator's award I thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to:
>
> (a) ...;

(b) the amount of compensation;

(c) ...;

(d) ...;

(2) ...

(3) Where the total amount of any award in respect of any scheduled land exceeds RM15,000, any government or any person or corporation undertaking a work which in the opinion of the state authority is of public utility, and on whose behalf such land was acquired pursuant to s 3, shall be deemed to be a person interested in any scheduled land under sub-s (1), and may make objections on any of the grounds specified in sub-s (1).

The term 'person interested' is defined in s 2(1) of the Act as including 'every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant by the month or at will'.

Counsel for the plaintiff submitted that under s 37(3) there are three conditions which need to be fulfilled before any government or any person or corporation can make an objection, namely:

(1) that the award exceeds RM15,000;

(2) that the undertaking is a work which in the opinion of the state authority is of public utility; and

(3) that the land was acquired on behalf of that government or that person or corporation.

He argued that UEM failed to fulfill conditions (2) and (3) above. Counsel submitted that the said declaration in Form D (reproduced above) merely states that the scheduled land is needed for 'the second Malaysia-Singapore causeway project and the development of the Gelang Patah area'. There is no reference made to an undertaking of work which is of public utility as such and there is no mention of UEM and furthermore, the opinion of the state authority is not stated therein. He contended that if the opinion of the state authority is to be stated, it should appear in the declaration in Form D since s 8(3) of the Act provides that the declaration shall be conclusive evidence that all the scheduled land referred to therein is needed for the purposes specified therein. Section 8 reads:

(1) When the state authority decides that any of the lands referred to in s 7 are needed for any of the purposes referred to in s 3, a declaration in Form D shall be published in the *Gazette*.

(2) ...

(3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.

Counsel then argued that the first defendant's contention as stated in para 4(iv) of his affidavit (encl 9) of his belief that UEM is a person interested, as it is involved in the second causeway project and the development of the Gelang Patah area, for whatever it is worth, cannot affect the conclusiveness of the declaration. The said para 4(iv) reads:

A ... Bagaimana pun saya sesungguhnya percaya bahawa defendan kedua adalah suatu pihak berkepentingan kerana ia terlibat dalam 'Projek laluan kedua Malaysia-Singapura dan pembangunan kawasan Gelang Patah' yang adalah sebenarnya kerja raya untuk penggunaan awam.

Counsel submitted that the object mentioned in the said declaration in B Form D would fall within s 3(a) rather than s 3(b) or (c) of the Act but in any event that it is for UEM to show that they fall within that class of persons referred to in s 37(3). Section 3 reads:

The state authority may acquire any land which is needed:

(a) for any public purpose;

C (b) by any person or corporation for any purpose which in the opinion of the state authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or;

(c) for the purpose of mining or for residential, agricultural, commercial or industrial purposes.

D He then referred to a recent case, namely, *Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban & Anor* [1995] 3 MLJ 710, wherein the Court of Appeal ruled that since the scheduled land in that case was acquired for a public purpose, namely, the development of a new township, which could only come under s 3(a) of the Act, that E purpose ruled out any involvement of any other person or corporation on whose behalf the scheduled land was acquired by the state authority and hence, the appellant, on whose behalf the scheduled land was acquired, could not avail itself of s 37(3) and make objections to the amount of compensation on the ground that it was excessive. With regard to the instant case, counsel conceded that the construction of the second causeway F by itself is an undertaking of public utility but that the development of Gelang Patah as a township is definitely not an undertaking of public utility as that purpose is for a public purpose which could only come under s 3(a) of the Act.

Senior federal counsel who represented the first defendant submitted G that UEM was a 'person interested' within the contemplation of s 37 of the Act, as UEM was involved in the project which is clearly an undertaking of public utility and that since UEM had objected to the amount of the award which it said was excessive, the land administrator had to withhold 25% of that amount pursuant to s 29A of the Act.

H In his submission, counsel for UEM contended that under the said development agreement, UEM, on whose behalf the scheduled land was acquired, would be undertaking works which are of public utility and hence shall be deemed to be a 'person interested' in the scheduled land as provided for under s 37(3) of the Act and thus would have the standing to make objections to the amount of compensation awarded. He pointed out I that the said development agreement was entered into prior to the publication of the declaration in Form D in the *Gazette* and that the agreement clearly showed that the scheduled land was acquired on behalf of UEM and that the works to be undertaken by UEM clearly included works of public utility, namely, the construction of the second causeway and the expressways.

Looking at the said development agreement, which was entered into before the publication of the declaration in the *Gazette*, I do not think it can be disputed that the scheduled land was acquired by the state authority on behalf of UEM. In that agreement UEM agreed to pay to the state government an amount equal to the acquisition costs and this was provided for in cl 8.4 which reads:

> *Consideration*: In consideration of the state government ensuring that the state authority acquires the alienable areas (other than any existing state land) and alienates the alienable areas as contemplated by this Part C, the development company shall pay, or shall ensure that the relevant property company pays, to the state government an amount equal to the acquisition costs in respect of each part of the alienable areas so alienated. In addition, in consideration of the state government ensuring that the state authority acquires the bridge areas and expressway areas, the development company shall pay to the state government an amount equal to the acquisition costs for the bridge areas and expressway areas. ...

It is clear that the only issue which needs to be determined in this action is whether UEM falls within the contemplation of the words 'person or corporation undertaking a work which in the opinion of the state authority is of public utility'. Counsel for the plaintiff argued that UEM, a public listed company, was not a corporation undertaking a work of public utility. I cannot see how such an argument can hold water. The relevant words appearing in s 37(3) of the Act are 'any government or any person or corporation undertaking a work which in the opinion of the state authority is of public utility' and I would think that these words would encompass any entity that undertakes a work of public utility. In my view these words are not restricted to refer only to state governments or persons or corporations, including statutory bodies performing some public service, eg a gas corporation or a water board, but would include companies incorporated under the Companies Act 1965 which are empowered by its memorandum and articles of association and appointed by any government or public authority to perform an undertaking for the general utility of the public. According to s 3 of the Interpretation Acts 1948 and 1967 the word 'person' includes 'a body of persons, corporate or unincorporate' and according to 1 *Jowitt's Dictionary of English Law* (2nd Ed), the word 'corporation' means 'a succession or collection of persons having in the estimation of the law an existence and rights and duties distinct from those individual persons who form it from time to time'. Thus, either way, the words 'person' or 'corporation' would include, *inter alia*, companies registered under the Companies Act 1965 and UEM clearly falls within the contemplation of the words 'person or corporation' as found in s 37(3) of the Act. The question as to whether UEM was empowered, inter alia, to carry out an undertaking of public utility could of course be answered by a quick perusal of its memorandum and articles of association. Counsel for the plaintiff however omitted to make reference to its memorandum and articles of association although he contends that UEM, a public listed company, was not a corporation undertaking a work which is of public utility. That being the case, I would think that s 19(1) of the Companies

A Act 1965 read together with paras 6 and 10 of the Third Schedule to that Act would be of assistance. Section 19(1)(c) of the Companies Act 1965 provides:

> (1) ... the powers of a company, whether incorporated before or after the commencement of this Act, shall include:
>
> B (c) unless expressly excluded or modified by the memorandum or articles, the powers set forth in the Third Schedule ... .

and paras 6 and 10 of the said Third Schedule reads:

> 6 To enter into any arrangements with any government or authority, supreme, municipal, local, or otherwise, that may seem conducive to
> C the company's objects, or any of them; and to obtain from any such government or authority any rights, privileges, and concessions which the company may think it desirable to obtain; and to carry out, exercise, and comply with any such arrangements, rights, privileges, and concessions.
>
> D 10 To construct, improve, maintain, develop, work, manage, carry out, or control any buildings, works, factories, mills, roads, ways, tramways, railways, branches or sidings, bridges, reservoirs, watercourses, wharves, warehouses, electric works, shops, stores, and other works and conveniences which may seem calculated directly or indirectly to advance the company's interests; and contribute to, subsidize, or otherwise
> E assist or take part in the construction, improvement, maintenance, development, working, management, carrying out, or control thereof.

Paragraphs 6 and 10 above, unless expressly excluded or modified by its memorandum or articles, would empower a company registered under the Companies Act 1965 to carry out an undertaking of public utility and the
F issue as to whether the memorandum and articles of UEM contain or do not contain the equivalent of those paragraphs as found in the Third Schedule was not raised at the hearing. I would have thought that a reference to the memorandum and articles of UEM by any of the parties would be of assistance to determine the sole issue raised in this action.

Be that as it may, I would think that before the main issue in the
G instant case can be determined, a question which needs to be answered first would be, 'what is "an undertaking of public utility"?' In relation to the words 'public utility' 3 *Words and Phrases Legally Defined* (3rd Ed) states as follows:

> Literally the word 'utility' means usefulness but it is commonly used to refer
> H to a corporation that performs a public service and so is a public utility. Hence railroads, airlines, bus lines, gas and electricity corporations are known as 'public utilities'. Webster defines a 'public utility' as a business organization performing some public service and, hence, subject to special governmental regulations such as fixing of rates and requirements of incidental facilities. The *Shorter Oxford Dictionary* defines 'public utilities' as
> I the services or supplies commonly available in large towns such as omnibuses, electricity, water etc. The expression 'of public utility' could mean 'of usefulness for' or 'in the service of the public' and so 'an undertaking for the general utility of the public'.

The courts in Australia seem to be of the view that the words 'an undertaking of public utility' should be given a wide interpretation. In *Top of the Cross Pty Limited v Federal Commissioner of Taxation; Travel Holdings (Australia) Pty Limited v Federal Commissioner of Taxation* (1980) 80 ATC 4,617, which was referred to by counsel for UEM, Woodward J of the Supreme Court of New South Wales was of the view that the construction and maintenance of a motel was an undertaking of public utility.

In that case, the appellants which are companies, had been at all relevant times carrying on the business of motel trading as partners, and in partnership built and subsequently operated a motel at Melbourne Airport pursuant to an agreement with the Department of Civil Aviation. They then claimed deductions under s 62A of the Income Tax Assessment Act 1936 in respect of the expenditure which they incurred in building the motel. One of the issues before the court was whether the construction and operation of the facilities carried out by the partners could be considered as 'an undertaking of public utility' within the meaning of s 62A(4) of the said Income Tax Assessment Act 1936. Section 62A reads:

> (1) Where a franchise granted on or before 7 April 1978 requires that the undertaking which is the subject matter of the franchise shall become the property of the authority granting the franchise after the expiration of the period of the franchise without any reimbursement of any of the expenditure thereon, a proportionate part of the expenditure which the owner of the franchise is required by the franchise to incur, shall be an allowable deduction to him so long as he continues to be the owner of the franchise.
>
> (2) ... .
>
> (3) ... .
>
> (4) For the purpose of this section, 'franchise' means a grant by the commonwealth or a state, or by a public authority constituted by or under an Act or state Act, whereby in consideration of the construction and maintenance of an undertaking of public utility a person is, during some limited period, authorized to collect and retain the revenue earned by that undertaking.

The Federal Commissioner of Taxation was of the view that the expenditure was outside the provisions of s 62A. The partners therefore appealed. Woodward J said, at p 4,633:

> What was done in the completion of the motel and other facilities could only have been done with the authority of the commonwealth government, through the department of civil aviation, the power to do which was vested in it. The department therefore, had it itself engaged upon the construction done by the partners, would have obviously embarked upon what must be regarded as an undertaking of public utility. The fact that the partners were interested in profiting from the undertaking is not relevant in determining whether the undertaking was, within the meaning of the section, an undertaking of public utility.
>
> I am of the view that the construction and operation of facilities done by the the partners could, in the words of Murphy J 'well be considered as an undertaking of public utility within the meaning of s 62A(4) of the Income Tax Assessment Act 1939'.

A The Commissioner appealed and in *Federal Commissioner of Taxation v Top of the Cross Pty Ltd & Anor* (1981) 57 FLR 294, the Federal Court of Australia agreed that the construction and maintenance of the motel was an undertaking of public utility. Bowen CJ and Ellicott J at p 307 said:

> ... the first question which arises is whether the airport motel falls within the
> B description of an 'undertaking of public utility'. The airport motel was required by the commonwealth to be constructed on land owned by the commonwealth and under the control of the department of civil aviation adjacent to an international airport. It was designed to serve primarily members of the public traveling on international and domestic flights. In our opinion it is properly within the description of an undertaking of public
> C utility.

In *Seatainer Terminals Ltd v Federal Commissioner of Taxation* (1979) 47 FLR 108, the Melbourne Harbour Trust Commissioners ('the Trust'), a public authority controlling port facilities at Melbourne, entered into arrangements with a company in consequence of which the company
D incurred substantial expenditure in constructing and maintaining a container terminal and depot on land belonging to the Trust. Under the arrangements there was a lease of land upon which most of the relevant buildings were constructed by the company for a term of 21 years. As in the Australian case referred to earlier, one of the issues was whether the construction and maintenance of the container terminal and depot fell within the
E contemplation of s 62A of the said Income Tax Assessment Act 1936, ie whether it was an undertaking of public utility. At p 120, Murphy J said that the construction and maintenance of the container terminal in the port of Melbourne could readily constitute 'an undertaking of public utility' within the meaning of the said Act and that the mere fact that the
F company was going to conduct the same for profit will not cause such an undertaking of public utility to cease to be such an undertaking. At p 126, Murphy J said:

> It is in my view not helpful to look at the motivation of the appellant either in obtaining and negotiating the leases of the lands in question, or in constructing and conducting this enormously expensive undertaking. The
> G fact that the appellant was interested in profiting from the undertaking is not to the point, which is rather whether the undertaking is, within the meaning of the section, 'an undertaking of public utility'.
>
> I think that it is clear that, had the Trust itself engaged in constructing the whole undertaking comprising berths, wharf, cranes, terminal and depots,
> H it would without question have appeared in ordinary language to have an undertaking of public utility.

In the instant case, from my reading of the said development agreement, the whole undertaking, ie the construction of the second causeway and expressways and the development of the Gelang Patah area is an undertaking
I of public utility. In cl 21 of the agreement, UEM had agreed to commence 'Primary Infrastructure Works' after the relevant approvals have been obtained. The 'Primary Infrastructure Works' *inter alia,* are as follows:

(1) Roads — 'the construction of a primary distributor road which will be a dual two-lane carriageway from the south of Gelang Patah

through the cloverleaf interchange of the second crossing expressway to the Central Business District area providing access from the second crossing expressway to the industrial and residential areas of the New Town';

(2) Water — 'the construction of a pipeline from the university service reservoir ... . The pipeline will be routed along Federal Highway Route 1 and Johor Bahru Parkway';

(3) Electricity — 'the construction and laying of reinforced concrete ducts across roads and bridges ... to provide a primary transmission network to the New Town'. UEM will also contribute towards the cost of laying cables and the provision of equipment at the sub-stations and 'will provide street lighting along the primary distributor road'.

(4) Telecommunications — UEM will 'construct all relevant telecommunications ducts and manholes'. The said ducts will be laid *inter alia*, along the carriageway from the 'cloverleaf interchange of the Second Expressway to Phase I industrial and residential areas'.

I would think that had the state government itself engaged in constructing the above 'Primary Infrastructure Works' which comprised a road network system and the second causeway, water pipelines, the infrastructure for transmission of electricity and also telecommunications, it would without question have appeared in ordinary language to have an undertaking of public utility. Furthermore, it was also agreed that UEM would surrender the roads and other public utility areas after its construction to the state government at no cost or expense to the state government. Clause 17.3 of the said development agreement reads:

> *Surrender of roads and public utility areas*: The development company shall, in relation to each phase, surrender, or ensure that the relevant property company surrenders, the relevant parts of the roads and public utility areas to the state government or as it may direct at no cost or expense to the state government and free from any charges, encumbrances or other security interests whatsoever (including any charge) as soon as reasonably practicable after completion of the relevant infrastructure works and in any event not later than the date on which those parts of the phase land adjacent to those parts of the roads and public utility areas have been developed in accordance with the layout plans. The state government shall be responsible for the maintenance, repair and protection of those parts of the roads and public utility areas so surrendered with effect from the date of such surrender.

Counsel for the plaintiff has also contended that the said declaration did not at all reflect the opinion of the state authority that UEM was undertaking a work of public utility. He argued that since the declaration shall be conclusive evidence that all the scheduled land referred to therein were needed for the purpose specified therein, such opinion of the state authority must appear in the declaration and that it was not for the land administrator, ie the first defendant to say so in his affidavit. He contended that the said development agreement had nothing to do with an undertaking of public utility and that the construction of certain public utilities therein were

incidental only to the development of a new township which was not an undertaking of public utility.

With respect, I cannot see any merit in the above arguments. Under s 37(3) the state authority is the sole authority to decide what amounts to an undertaking of public utility and I cannot find any provision in the Act which says that it must specifically state its opinion in the declaration. I cannot also find any provision which says that it must name the person on whose behalf the scheduled land is being acquired. I am also of the view that such an opinion cannot be questioned by a civil court. The declaration states that the scheduled lands are needed for the second causeway project and the development of the Gelang Patah area and to me, that could fall under any of the purposes mentioned in s 3 of the Act. I do not think that the state authority needs to confine its acquisition of land for purposes under either s 3(a), (b) or (c) or to mention the particular subsection in the declaration or as contended by counsel for the plaintiff, to state in the declaration its opinion that it is an undertaking of public utility. In *Yew Lean Finance Development (M) Sdn Bhd v Director of Lands & Mines, Penang* [1977] 2 MLJ 45, an affected landowner raised an almost similar contention, namely, that the declaration made pursuant to s 8 of the Act, failed to reflect the purpose for which the scheduled land was being acquired. In that case, the plaintiff's land was acquired by the State Authority of Penang, as a result of which it brought a suit against the Director of Lands and Mines, Penang, seeking inter alia the following order, viz, a declaration that the *Gazette* notification is null and void as it fails to specify the purpose for which the plaintiff's land was being acquired. The plaintiff contended that the land was acquired for some vague purpose. The notification stated that the land was being acquired for residential, industrial and public purpose. Thus the substantive issue before the court was whether the notice stating that the scheduled land was acquired for residential, industrial and public purposes was null and void because it was vague and did not particularize the specific purpose.

At p 46 Arulanandom J said:

> ... [the] government is the sole authority to decide what is, or, what is not, a public purpose, and the decision by [the] government in this respect cannot be questioned by a civil court.

He further stated at p 47:

> It is therefore quite clear that once a *Gazette* notification under s 8 is given it is conclusively established that the lands are needed for the purpose stated.

With regard to whether the particular purpose must be specified in the notification, the learned judge said at p 47:

> ... The state authority's right to choose the particular purpose or purposes is neither restricted not limited by the Act. ... The discretion therefore is left with the state authority to choose an area of land for whatever purpose or purposes it needs to acquire it. Again, to interpret the Act so as to read that each particular purpose for each particular lot of land must be specified in the notice of intended acquisition would also lead to absurdity. One of the canons of construction is that there is a presumption against interpretation

> of words which interpretation would lead to inconvenience, injustice, absurdity or unreasonableness. The state authority may acquire an area for a public purpose. The area may necessarily consist of different lots of different sizes and different shapes. The object of the acquisition may be to create an industrial estate with the necessary infrastructure. This would mean that parts of the scheduled land, I repeat scheduled land, and not specific lots, may be used for the construction of factories, part of the land for construction of the roads, part of the land for constructing drains, part of the land for constructing residential houses, part for schools, *ad infinitum*. In order to derive the maximum benefit from all the lands it would only be possible to do the planning after the government has acquired and taken possession of the land. For the notice of intended acquisition to specify what particular purpose any particular lot would be put to, would be to court absurdity and unreasonableness.

What the learned judge said above would be consistent with s 2(3) of the Act which reads:

> Any notification, declaration or other instrument made or issued under this Act shall be valid and effectual for all purposes notwithstanding that pieces or parcels of any lands referred to therein are held under different titles or by different persons.

And at p 48 the learned judge said:

> Therefore in this case the state authority need not confine its acquisition of land for purposes which come under one head only, ie either under 3(a), (b) or (c). They may use either head individually or may combine one or two of them as the case may be ... . The only intelligent reading of s 3 would be to give the state authority the right either to acquire land under one limb of s 3(a), (b) or even part of the limb of s 3(c), or to combine more than one of these purposes at the time of the acquisition. ...
>
> The state authority can acquire land for one or more or all the purposes stated in s 3, and there is no duty on the part of the authority to state in the notice of declaration of intended acquisition or in any other way what specific purpose each of the specific lots in the schedule to the notice would be used for.

In the instant case, the declaration states that the scheduled land is needed for the purpose of the second causeway project and the development of the Gelang Patah area. To me, the second causeway project can fall under either s 3(a) or (b), ie a public purpose or a purpose which is beneficial to the economic development of Malaysia and the development of the Gelang Patah area, allegedly as a township, can fall under either s 3(a), (b) or (c). The construction by UEM of the 'Primary Infrastructure Works' would seem to be an enormously expensive undertaking at no cost or expense to the state government and cannot be said to be merely incidental, as alleged by counsel for the plaintiff, to the development of Gelang Patah as a township. The fact that UEM will also be undertaking the development of the new township is not relevant. It is the state authority who is the sole authority to decide whether any government or any person or corporation, on whose behalf the scheduled land is acquired, is undertaking a work which is of public utility and the decision by the state authority in this respect cannot be questioned. I would think that as long as the state authority is of the view that that person on whose behalf the scheduled

land is acquired will be undertaking a work of public utility will be sufficient for that person to be deemed a 'person interested' in any of the scheduled lands and consequently he would have the standing to make an objection to the amount of compensation awarded.

Counsel for the plaintiff also argued that it is the opinion of the state authority which is important and not the opinion of the first defendant, ie the land administrator. He contended that the land administrator's affidavit does not at all reflect the opinion of the state authority. I cannot see any merit in this argument. The term 'state authority' has been defined in the Act to mean 'the Ruler who, for the State of Johor, would be His Highness, the Sultan of Johor' as provided for in art 1 of the second part of the Law of the Constitution for the State of Johor. He is vested with the executive authority of the state although, as a constitutional ruler, he acts on the advice of the executive council. Under the provisions of the Act, the land administrator acts upon the instructions of the state authority, eg whenever any lands are needed by the state authority for any of the purposes referred to in s 3 of the Act, he shall prepare and submit to the state authority a plan of the whole area (see s 7 of the Act). Under the provisions of the Act, he is required to commence proceedings for the acquisition of the land by giving public notice and by fixing the date of an enquiry for the hearing of claims in relation to compensation (see s 10 of the Act), and he is required to make full enquiry into the value of all scheduled land and shall as soon as possible thereafter assess the amount of compensation (see s 12 of the Act). In the course of making any enquiry he may even enter into arrangements, (see s 15 of the Act) and any reference to court can only be made by him (see s 36 of the Act). From my reading of the provisions of the Act, the land administrator acts upon the instructions of the state authority and it is my view that if at all there is any action, suit or other proceeding under the provisions of the Act against the state authority, it should be brought against the land administrator (as has been done in the instant case) in the name of his office and consequently, the contents of his affidavit, if any, would clearly reflect any decision or opinion of the state authority in relation to the subject-matter of that action, suit or proceeding. In short, he represents the state authority, that is, the Ruler. In the instant case, he has stated in his affidavit that he believes that UEM is a 'person interested' as it is involved in the second causeway project and the development of the Gelang Patah area which are works of public utility. That, to me, would be sufficient to constitute 'the opinion of the state authority' as stated in s 37(3) of the Act. Thus, as it is my view that UEM is 'a person interested', I cannot see why UEM cannot avail itself of the provisions of 37 and make objections to the amount of compensation awarded, if at all that was its intention when it made its objections to the land administrator requiring that he refer the matter to the court for its determination.

I have also noted that the plaintiff has not introduced any form of evidence to support its contention that its land was not acquired for an undertaking of work which is of public utility. According to the said development agreement, the lands earmarked for development covers an area of 10,921 hectares comprising 9,371 hectares to be acquired by the

state authority and 1,550 hectares of existing state land. Clause 1.1 of the said development agreement defines the words 'Development Land' as follows:

> the land shown in the land acquisition plan being an area of approximately 10,921 hectares comprising 9,371 hectares to be acquired by the state government pursuant to cl 6 and 1,550 hectares of existing state land (together with, where the context so admits, any additional land which the development company considers is required for the development and which the state government determines is so required, and which is alienated to the development company or to the relevant property company pursuant to cl 6.4) including, for the avoidance of doubt, the bridge areas and expressway areas; ...

The scheduled lands comprise an area of 9,371 hectares and according to the schedule, the plaintiff's land totalled approximately 1,239 hectares which, according to my calculations, would be about 13.2% of the scheduled lands or about 11.3% of the area earmarked for development. I would think that the burden is on the plaintiff to prove that its land was not acquired for an undertaking of work which is of public utility but has been earmarked for some other development which is not in the nature of an undertaking of public utility.

On the whole, I am of the view that there is no requirement on the part of the state authority to state its opinion in the declaration made pursuant to s 8 of the Act that the scheduled land which included the plaintiff's land is acquired for an undertaking of work in relation to public utility. A declaration which is worded generally to the effect that the scheduled land is being acquired for any purpose which falls within the contemplation of s 3 of the Act would suffice. I am also of the view that the words 'public utility' appearing in s 37(3) of the Act should not be restricted to the normal or usual undertaking in the nature of a public utility, for example, the supplying of gas, electricity of water but should encompass any undertaking being carried out for the general utility of the public, and the fact that the person or corporation carrying out the undertaking will benefit or is interested in profiting from other incidentals arising from the undertaking is not relevant in determining whether the undertaking is within the meaning of the said s 37(3), ie an undertaking of public utility. I would think that the construction of a road-system, a water pipe-line, an electrical transmission network, telecommunications infrastructure and drainage structures would clearly amount to an undertaking of work which is of public utility within the meaning of s 37(3) of the Act. That being so, I cannot see any merit in the contention of the plaintiff that UEM is not a person or corporation undertaking a work of public utility.

Counsel for the plaintiff has incidentally submitted that there is an inconsistency between ss 3(b) and 37(3) of the Act, viz, before it was amended in 1991. Section 3(b) reads:

> The state authority may acquire any land which is needed:
>
> (b) by any person or corporation undertaking a work which in the opinion of the state authority is of public utility;

A After its amendment it reads:

> The state authority may acquire any land which is needed:
>
> (b) by any person or corporation for any purpose which in the opinion of the state authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public;

B With respect, I cannot find any inconsistency between the said s 3(b) as amended and s 37(3). In my opinion, s 3(b) as amended is wider and has in effect enlarged the powers of the state authority in land acquisition. The present s 3(b) would encompass any purpose, including any undertaking of public utility, which, in the opinion of the state authority, would bring C about economic development to the nation, state or to the public. An undertaking such as the construction of the second causeway and expressways and the undertaking of the said 'Primary Infrastructure Works' in the Gelang Patah area would surely be beneficial to the economic development of the nation, the State of Johor and to the public generally. D I would also tend to agree with counsel for UEM, when he suggested that the legislature in its wisdom has decided that only a government or a person or corporation undertaking a work which in the opinion of the state authority is of public utility has a right to appeal under s 37. To me, these two sections are in effect mutually exclusive and that being so, I see no inconsistency.

E Having found the following, namely:

(1) that UEM is a person undertaking work which in the opinion of the state authority is of public utility;

(2) that the plaintiff's land was acquired on behalf of UEM pursuant to F s 3 of the Act;

(3) that UEM is deemed to be a person interested in the plaintiff's land; and

(4) that UEM is entitled to make objections pursuant to s 37(1)(b) of the Act as to the amount of compensation being awarded to the plaintiff G for the said acquisition,

it is my decision that the plaintiff's application for a declaration that the second defendant has no standing to and is not entitled to lodge an objection against the award of compensation made by the first defendant must fail and that being so, the plaintiff's application for an order that the H first defendant pay the plaintiff the full amount of the award together with interest must also fail.

The plaintiff's action is hereby dismissed with costs.

Action dismissed.

I Reported by Ng Kian Pin